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Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul

Addendum

Mission to Portugal: comments by the State on the report of the Special Rapporteur*

* Reproduced as received.

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Addendum to the Report of the Special Rapporteur on the independence of judges and lawyers on her official visit to Portugal (27 January – 3 February 2015)

The Portuguese Government's reaction to the Report of the Special Rapporteur on the independence of judges and lawyers on her official visit to Portugal (27 January – 3 February 2015)

1. In accordance with Portugal's standing invitation to all the Special Procedures of the Human Rights Council, the United Nations Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, conducted a working visit to Portugal from 27th January to 3rd February 2015, at the Portuguese Government's invitation.

2. The defence of the independence of the judiciary as a structuring value pertaining to the Rule of Law and to Democracy is a fundamental principle to which Portugal is deeply committed. Portugal is determined to promote this value in the United Nations framework, in particular in the United Nations Human Rights Council, a body to which Portugal was elected for the 2015-2017 term.

3. Before, during and after the Special Rapporteur's visit, the Portuguese Government responded to all requests in a spirit of constructive cooperation and dialogue, whilst fully respecting the independence of Ms. Knaul's mandate. This was acknowledged in the Special Rapporteur's Report

4. Portugal is fully committed to respecting the independence of the judges, as it has been done so far. In light of the Special Rapporteur's report, Portugal should like to recall that it is undergoing a period of severe budgetary constraints which make the management of the judicial system more difficult, as indeed happens with all the remaining areas.

5. During her visit, the Special Rapporteur met with members of the Portuguese Government, members of Parliament and representatives of several stakeholders of the judicial system. In the overall report on the visit and in the press release, the Special Rapporteur expressed some concerns that, in her view, may jeopardize the effectiveness of the principle on the independence of the judiciary. These concerns are also reflected in the draft Report to be submitted to the Human Rights Council.

6. Hence, and briefly, the concerns of the Special Rapporteur focused on the following:

i) the unexpected consequences of the implementation of the reforms, in particular, the legal instability, the security of the electronic system, in particular the processing of cases;

ii) the courts' and judges' lack of autonomy, especially as concerns the need to improve training for judges and prosecutors,

iii) citizens' access to justice;

iv) assistance provided to victims of domestic violence.

7. Regarding the implementation of reforms to the justice system, it should be mentioned that restructuring the fundamental components of the judicial system, such as the judicial map always imply, due to its dimension and scope, difficulties in implementation.

8. The reforms that have been implemented in the last years do not focus on partial aspects of the justice system. The reforms have restructured the whole system in order to make it more efficient, rational and closer to the citizens. Thus, while recognizing problems inherent to the implementation of reforms, in particular of the new judicial map and the

physical and computer infrastructures, the Government has speared no efforts in order to achieve the progressive normalization of the situation, which has occurred.

9. The computer program CITIUS related to case processing is already in full operation since the end of 2014 and improvements of infrastructures affected by the restructuring process are ongoing. Thus, the normal operation of the judicial system has been restored.

10. The debate on the reform of the judicial map lasted several years and was widely participated. During the entire process several entities were heard and their opinions taken into account, such as the High Council for the Judicature, the High Council of the Public Prosecution, the Bar Delegations, the Chamber of Solicitors, the Judges' and the Prosecutors' Unions, the Court Officials' Union and Local Governments as well as the National Association of Municipalities.

11. The reform is based on the extension of the territorial basis of courts, thereby enhancing their specialization through a new management model., The current organization deepens and extends to the entire country specialized courts, thereby streamlining the distribution and case processing, facilitating the allocation and mobility of human resources and the autonomy of the courts' structures.

12. Regarding training of judges and prosecutors, a considerable effort has been made in order to ensure the specialization of these professionals thereby enabling the implementation of a key aspect of the judicial organization reform: an increase of the degree of specialization of several courts.

13. The Centre for Judicial Studies has paid special attention to human rights training, through the traditional training methods and through publications, in particular electronic publications.

14. The Special Rapporteur's Report raises some concerns on the mechanisms of accessing to justice. This mechanism is crucial to guarantee, to the public in general, the effectiveness of the universal right of access to justice and to courts.

15. The Portuguese Government is aware that this mechanism can be improved. Hence, a study designed to identify the main aspects of the system that can be improved is currently ongoing. The objective is, to guarantee that all persons needing legal protection to have access to justice and to courts are better protected. When the outcome of the assessment study is finalized, the Portuguese Government will take the necessary measures so that the problems detected can be definitely corrected and, thereby, improve citizens' rights and access to justice.

16. Regarding the concerns expressed on the courts' lack managerial autonomy , the Portuguese Government has deepened, through the judicial organization reform, the courts' managerial autonomy. In order to increase the efficiency of the county courts, objectives are now set for a three-year period which is established by the county court, the High Council of Judicature and the General Prosecution Office together with the Ministry of Justice. This autonomy aims to introduce the concept of management by objectives. The purpose is that the court's managerial autonomy may constitute an incentive to improve the application of justice and its efficiency.

17. Assistance to victims of violence, even though not specifically connected with the independence of the courts, is a main priority of the Portuguese Government. In this context, it is necessary to distinguish two aspects: the persons detained in prisons/the victims of violence, in particular domestic violence, and the means for the prevention of recidivism.

18. As to the former, the concerns focused on the duration of pre-trial detention, on ill treatment, on the overcrowding in prisons and on the access to a lawyer. In this regard, the authorities have been developing measures to tackle these problems.

19. As to the duration of pre-trial detention, strict deadlines were established for this preventive measure that may only be extended in exceptional circumstances, duly justified and confirmed. These deadlines cannot be surpassed and if there is not a charge/conviction (according to the procedural phase) the defendant/ accused person has to be released.

20. As concerns violence against detained persons, there are internal mechanisms (Audit and Inspection Service of the Directorate General for Rehabilitation and Prison Services) and external ones (General Inspectorate of the Justice Services) that inquire into any allegations of violation, draw legal consequences and improve proceedings as regards the use of proportional force in a prison context.

21. There are several entities (Ombudsman – including in its capacity as National Preventive Mechanism under OP-CAT) members of Parliament, the Bar and representatives of international bodies) that may visit the prisons and detention centres without authorization from the competent authorities. This shows that Portugal is ruled by the principle of transparency and of collaboration with national and international entities in charge of the defence and promotion of the fundamental rights.

22. On the guarantees provided to detained persons, it should be mentioned that legislation, which is scrupulously complied with by the competent authorities, requires that in no circumstances can the detainee be deprived of his right to contact with his lawyer, not even when he is confined to a cell or to a disciplinary cell.

23. Regarding overcrowding in prisons, the Portuguese Government has been developing a broad range of measures designed to tackle this problem. These include the adoption of alternative measures to imprisonment that aim, first of all, to combat the excessive number of pre-trial detainees, enabling this pre-trial detention to be served in other ways than the prison establishment. These alternative measures (such as the electronic bracelet) are also used in the context of programmes designed to prevent recidivism of offenders in specific cases, such as domestic violence.

To conclude,

24. Portugal values, guarantees and praises the independence of the judiciary. Wherever deficiencies are identified, they will be suppressed. This independence requires a judicial managerial system that privileges the efficiency, the autonomy, the quality and the management by objectives.